Song Soon Cheok v Irene Hartanto @ Tan Hian Lie

HIGH COURT (KUALA LUMPUR) — DIVORCE PETITION NO S4–33–698 OF 2001
NORAINI ABDUL RAHMAN J
9 APRIL 2014

Civil Procedure — Ex parte application — Committal proceedings — Ancillary relief — Wife claimed to be housewife even though was director and shareholder of number of companies — Whether wife misled court — Whether there was intention to obstruct or frustrate administration of justice

This was an ex parte notice of application where the applicant ('the petitioner husband') applied for leave to issue committal proceedings against the respondent ('the petitioner wife') on the ground that the respondent had, in her application for ancillary relief, intentionally filed several affidavits where she averred that she was a housewife even though she was still a director and shareholder of a number of companies. The applicant alleged that by doing so, the respondent had misled the court.

Held, dismissing the application:

(1) Although the respondent had averred that she was and still was a home maker without disclosing that she was and still was a director and shareholder of the companies, there was nothing in the submission of the applicant that she intended to obstruct or frustrate the administration of justice and that her acts were conscious, deliberate and contumacious. If by the non disclosure of her directorship and shareholding, she had tried to do the above, then it was not so. The court was not misled by the affidavits of the respondent (see paras 14 & 16).

[Bahasa Malaysia summary

Ini adalah notis *ex parte* permohonan yang mana pemohon ('pempetisyen suami') memohon untuk izin menyerahkan prosiding komital terhadap responden ('pempetisyen isteri') atas alasan bahawa responden telah, dalam permohonannya untuk relief sampingan, dengan niat memfailkan beberapa afidavit di mana dia berhujah bahawa dia adalah suri rumahtangga walaupun dia masih pengarah dan pemegang saham untuk beberapa syarikat. Pemohon berhujah bahawa dengan berbuat sedemikian, responden menipu mahkamah.

Diputuskan, menolak permohonan:

(1) Walaupun responden telah berhujah bahawa dia masih suri rumahtangga

tanpa mendedahkan bahawa dia masih pengarah dan pemegang saham beberapa syarikat, tidak terdapat apa-apa dalam hujahan pemohon bahawa responden berniat untuk menghalang atau mengecewakan pentadbiran keadilan dan tindakannya adalah sedar, sengaja dan tegar. Jika tidak mendedahkan jawatan pengarahnya dan pemegangan sahamnya, responden cuba membuat yang di atas, dengan itu ia tidak. Mahkamah tidak ditipu oleh afidavit responden (lihat perenggan 14 & 16).]

Cases referred to

Bok Chek Thou & Anor v Low Swee Boon & Anor [1998] 4 MLJ 342; [1998] CLJ 86, HC (folld)

Edmund Ming Kwan @ Kwaun Yee Ming Edmund v Extra Excel (Malaysia) Sdn Bhd & Ors (Part 2) [2007] 7 MLJ 276; [2007] CLJ 400, HC (folld)

J&M Power Sdn Bhd v J&M Power Resources Sdn Bhd [2012] MLJU 640, HC (refd)

Jaginder Singh & Ors v Attorney-General [1983] 1 MLJ 71; [1983] CLJ (Rep) 176, FC (folld)

Ronald Philip Devereux & Anor v Majlis Perbandaran Langkawi Bandaraya Pelancongan & Ors [2012] 4 MLJ 665, HC (refd)

Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors [2012] 3 MLJ 458; [2012] 2 CLJ 849, FC (folld)

Wee Choo Keong v MBF Holdings Bhd & Anor and another appeal [1993] 2 MLJ 217, SC (refd)

Legislation referred to

Rules of the Federal Court 1995 r 3
Rules of the High Court 1980 O 1, O 52 r 2(2)

Miriam Eng (Miriam Eng & Partner) for the plaintiff.
YN Foo (YN Foo & Partner) for the defendant.

Noraini Abdul Rahman J:

[1] This is ex parte notice of application (encl 57) where the applicant ('the petitioner husband') is applying for leave to be granted by this court to issue committal proceedings against the defendant ('petitioner wife'). The notice at encl 57 is as follows:

(a) Bahawa Pemohon diberi kebenaran menurut Aturan 52 Kaedah 3 Kaedah-Kaedah Mahkamah 2012 untuk memohon satu Perintah Pengkomitan melalui Notis Permohonan yang diisukan menurut Aturan 52 Kaedah 4 Kaedah-Kaedah Mahkamah 2012 untuk mengkomitkan ke penjara Seri Paduka Baginda Yang Di Pertuan Agong untuk dipenjarakan untuk satu terma/tempoh yang ditetapkan/ditentukan oleh Mahkamah Yang Mulia ini dan/atau didenda satu jumlah yang ditentukan oleh

Mahkamah Yang Mulia ini kerana *PENGHINAAN TERHADAP MAHKAMAH* oleh Irene Hartanto @ Tan Hian Lie (No. KP: 601217-71-5036) iaitu Pempetisyen Isteri dalam tindakan asal Mahkamah Tinggi Malaysia di Kuala Lumpur Petisyen Perceraian No. S4-33-698-2001.

(b) Bahawa Responden yang dinamakan di atas membayar kos kepada Permohonan ini dan kos bersampingan.

(c) Bahawa *NOTIS UNTUK TUNJUK SEBAB* yang dilapirkan keapda Notis Permohonan (Ex-Parte) ini di Lampiran A diisukan oleh Mahkamah Yang Mulia ini; dan

(d) Perintah selanjutnya dan/atau relif lain dan/atau arahan atau perintah lanjutan yang didapati perlu oleh Mahkamah Yang Mulia ini.

[2] The main thrust of the submission of counsel for the plaintiff is that the respondent had intentionally, in her application for ancillary relief (encl 27) had filed several affidavits where she averred that she is a housewife. She also averred at para 6.5 of encl 28 that 'oleh kerana saya telah berhenti bekerja dalam perniagaan keluarga saya, saya telah kerja 'free-lance' ...'. This is the averment that the plaintiff alleged she misled the court because, she was at the time of her application at encl 27, was and still is a director of the following companies:

(a) Universal Realty Sdn Bhd;

(b) Universal Exports Sdn Bhd;

(c) Universal Estate (M) Sdn Bhd; and

(d) Auto Jet Sdn Bhd.

[3] In addition, the respondent is, at all material times, a shareholder in the following companies:

(a) Universal Tobacco & Holdings (M) Sdn Bhd;

(b) Auto Jet Sdn Bhd;

(c) Universal Estate (M) Sdn Bhd;

(d) Universal Realty Sdn Bhd.

[4] I heard the submissions on encl 27 and I had given my decision on the same day. The following is the O 1 made on 7 November 2013:

DI HADAPAN HAKIM NORAINI BINTI ABDUL RAHMAN

PAPA 7 NOVEMBER 2013 DALAM KAMAR

PERINTAH

(Lampiran 27)

ATAS PERMOHONAN Pempetisyen Isteri yang dinamakan di atas melalui Notis Permohonan untuk perubahan Dekri Nisi bertarikh 15 November 2001 dan relief sampingan bertarikh 23 April 2012 ('Lampiran 27') *DAN SETELAH MENDENGAR* M. Rajenthirakumar, peguamcara bagi Pempetisyen Isteri dan Pempetisyen Suami hadir secara diri sendiri *MAKA ADALAH DENGAN INI DIPERINTAHKAN* bahawa Dekri Nisi bertarikh 15 November 2001 diubah seperti berikut:

(a) Pempetisyen Isteri dan Pempetisyen Suami diberi hak penjagaan bersama (joint guardianship) bagi anak perkahwinan Song Mei Yuan (Sijil Beranak: AN 44142);

(b) Pempetisyen Suami memberi nafkah bulanan anak perkahwinan sebanyak RM6,000.00 sebulan dan bayaran ini hendaklah bermula pada atau sebelum 7 Disember 2013 dan bayaran-bayaran selepas itu dibayar pada atau sebelum 7 haribulan setiap bulan dan dimasukkan ke dalam akaun Pempetisyen Isteri sehingga anak perkahwinan mencapai umur 18 tahun;

(c) Perenggan 3 Dekri Nisi diubah untuk menambahkan perkataan 'tertakluk kepada kehendak anak tersebut.'.

DAN AKHIRNYA DIPERINTAHKAN bahawa kos tindakan ini ditanggung oleh Pempetisyen Suami dan Pempetisyen Isteri masing-masing.

Bertarikh pada 7 November 2013.

[5] Counsel for the plaintiff submitted that what the defendant claimed in the various affidavits that she is a home maker and that she quit her job in 2007 from the family business are false and misleading.

[6] In order to grant leave to issue committal proceedings, the court must be satisfied that there is a prima facie case for contempt. Counsel cited the following cases:

(a) *Wee Choo Keong v MBF Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217;

(b) *Ronald Philip Devereux & Anor v Majlis Perbandaran Langkawi Bandaraya Pelancongan & Ors* [2012] 4 MLJ 665;

(c) *J&M Power Sdn Bhd v J&M Power Resources Sdn Bhd* [2012] MLJU 640.

[7] All these cases show that in order to grant leave to issue committal proceedings, the court must be satisfied that there is a prima facie case.

[8] It is noted that in the cases cited above, it is regarding the failure of one party to obey a court order. It is not a case where the person affirming the affidavits had lied in their affidavits.

[9] And so, counsel cited the case of *Tan Sri Dato' (Dr) Rozali Ismail and Ors v Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458; [2012] 2 CLJ 849. This is a Federal Court decision. In this case the Federal Court had granted leave to commence committal proceedings against the respondents pursuant to O 52 r 2(2) of the Rules of High Court 1980 ('RHC') read together with r 3 of the Rules of the Federal Court 1995 . The respondent had affirmed an affidavit that in short, they had not breach a court order. They then appeal to the Federal Court to set aside the leave granted against them. The Federal Court, having heard submission, set aside the leave to commence committal proceedings because in fact, the respondent did not breach a court order. Again, it is to be noted that although leave was granted, it was because at the point of time it was granted, there was prima facie case for contempt of court for non compliance of a court order. Hence, I don't see how this case could help the applicant.

[10] In the Federal Court case of *Jaginder Singh & Ors v Attorney-general* [1983] 1 MLJ 71; [1983] CLJ (Rep) 176, Raja Azlan acting LP (as His Majesty then was) said:

> The facts of the present case themselves demonstrate the special danger in blurring the distinction between perjury and contempt. A case of contempt by false testimony is relatively rare. In general, such false testimony will result in the party or witness being liable to prosecution for perjury. Contempt of court would lie not only in the false testimony but in the obstruction or frustration of the administration of justice. What is required is 'an envinced intention' to interfere with the course of justice. That, in our opinion, is what contempt of court is all about. The approach to be taken in such a case as the present was considered by the High Court of Australia in *Coward v Stapleton* [1953] 90 CLR 573.
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> What does emerge as a general proposition from *Coward v Stapleton* is that 'there must be a manifestation in some form of an intention on the party of the witness not to give a real answer', a finding that takes the case across the borderline that separates perjury from contempt. False testimony, together with a refusal to answer questions amounts to an obstruction of the administration of justice which is punishable as a contempt; false testimony, without more, does not.

[11] In the case of *Bok Chek Thou v Low Swee Boon & Anor* [1998] 4 MLJ 342; [1998] CLJ 86, it was held:

> To fall within the purview of contempt of court based on perjury, a witness not only must have perjured but must also have intended to obstruct or frustrate the administration of justice. In this case, the witnesses had admitted committing those offences, without care to truth and justice. Both witnesses had intended deliberately to obstruct or frustrate the administration of justice and their acts were conscious, deliberate and contumacious.

[12] In his judgment in the above case, Suriyadi Halim Omar J (as His Lordship then was) said:

On the other hand, a few years earlier, in the case of *Jaginder Singh & Ors v Attorney-general* [1983] 1 MLJ 71; [1983] CLJ (Rep) 176, (FC), Raja Azlan Shah Ag LP (as he then was) at p 73, added a rider by saying:

> False testimony, together with a refusal to answer questions amounts to an obstruction of the administration of the administration of justice which a punishable as a contempt, false testimony, without more, does not (Emphasis mine).

His Lordship opined that a false testimony without more, will result in that party or witness being liable to prosecution for perjury, whilst for contempt of court that the false testimony must be supplemented by the intention to obstruct or frustrate the administration of justice. In other words, the supplementary factor must be present. By the enunciation of the principles laid down in *Coward v Stapleton*, and endorsed by Raja Azlan Shah Ag LP, it is now established that, to fall within the purview of contempt of court based on perjury, a witness not only must have perjured, but had intended to obstruct or frustrate the administration of justice. In the current case, clearly the witnesses had admitted committing those offences with the intention of helping the second plaintiff, without care to truth and justice.

[13] In the case of *Edmund Ming Kwan @ Kwaun Yee Ming Edmund v Extra Excel (Malaysia) Sdn Bhd & Ors (No 2)* [2007] 7 MLJ 276; [2007] CLJ 400, the court held:

> The non-disclosure did not amount to a contempt of court as the petitioner had not proved beyond reasonable doubt that the said respondents by their non-disclosure had intended to or did in fact pervert the administration of justice.

[14] Applying the principles enunciated in all the cases above, I find that although the defendant had averred that she was and still is a home maker without disclosing that she was and still is a director and shareholder of the four family companies, there was nothing in the submission of counsel for plaintiff that she intended to obstruct or frustrate the administration of justice and that her acts were conscious, deliberate and contumacious. If by the non disclosure of her directorship and shareholding, she had tried to do the above, then in my opinion it is not so.

[15] This may be related to her asking the court for an increase in the maintenance of the daughter of marriage where the decree nisi had provided RM1000 per month and she in her application asked for RM9000. However, this court had in fact decided that the maintenance be increased to RM6000 as per the applicants own admission that he voluntarily and on his own accord and generosity increased maintenance to RM6,000. In my judgment dated 7 November 2013 I said:

> As regards the maintenance of RM6,000 per month, I had ordered so because he, the petitioner husband was giving that amount even though in the decree nisi dated 15 November 2011, he was ordered to pay only RM1000 per month. I must

commend his generosity and that is also one of the reason why I am of the opinion that he should remain as one of the guardian. He has her interest at heart. RM6,000 is an adequate sum for the maintenance of Song Mei Yuan bearing in mind all other expenses such as dental, medical, education is already provided in the decree nisi dated 15 November 2001. Hence, when petitioner wife asked for an increase from RM1,000–RM9,000 I did not allow it.

[16] I must add that I was not misled by the affidavits of the petitioner wife. The order I gave was based on petitioner husband's own voluntariness to increase maintenance to RM6,000.

[17] Based on the above, I am dismissing the applicant is application with costs to be borne by the applicant himself.

Application dismissed.

Reported by Afiq Mohamad Noor